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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 974

In the Matter of

DIANA KEARNY POWELL

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered October 4, 1967 disbarring Petitioner from the practice of law before that Court, and Order denying Motion to set aside Order of Disbarment, entered October 25, 1967.

OPINIONS BELOW

Order of Disbarment in the United States Court of Appeals for the District of Columbia Circuit, in the matter of Diana Kearny Powell, Disbarment No. 108, was entered October 4, 1967, without opinion, and is not yet reported.

JURISDICTION

Jurisdiction is under 28 U.S.C. 1254(1).

Review is sought of the judgment of Disbarment of the United States Court of Appeals for the District of Columbia Circuit, entered October 4, 1967 (13a), Motion to Set Aside (13a) denied by Order entered October 25, 1967 (15a), on Constitutional and common-law grounds, and on the grounds it is in conflict with prior decisions of Courts of Appeals generally and of this Court. The Constitutional questions were raised in the first pleadings filed by Respondent-petitioner, and have not been answered.

QUESTIONS PRESENTED

The questions presented are:

1. Whether a Judgment of Disbarment entered by a United States Court of Appeals in an original proceeding, without an opportunity to produce witnesses and to be heard on oral argument, after demand therefor, and without confrontation by witnesses against respondent, and without opinion or statements, deprives Respondent of a valuable right without due process of law, and of the equal protection of the law, in violation of Amendments 5, 6, 9, and 14 of the Constitution of the United States.

2. Whether personal involvement of members of Court entering Order of Disbarment deprives Respondent of due process of law and the right to a fair trial by an impartial tribunal, in violation of Amendments 5, 6, 9 and 14 of the Constitution.

3. Whether an Order of Disbarment entered without comment, in the complete absence of countervailing evidence to overcome Petitioner-respondent's extensively documented showing of innocence of misconduct, violates rights protected by Amendments 5, 6, 9, and 14 of the Constitution.

4. Whether disbarment entered for the sole purpose of discrediting a formal complaint corroborated by documen-

tation, addressed by Petitioner-respondent to the Attorney General and alleging corruption in certain members of the bar and judiciary, violates rights of petition and free speech protected by Amendment One of the Constitution of the United States.

CONSTITUTIONAL AMENDMENTS AND RULES INVOLVED

Constitution of the United States:

Article 1: Congress shall make no law . . . or abridging the freedom of speech, or of the press; or the right of the people to assemble, and to petition the government for a redress of grievances.

Article 5: No person shall . . . nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article 9: The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article 14: Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Canons of Professional Ethics:

Canon 1: The duty of the Lawyer to the Courts. It is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of

its supreme importance. . . . Whenever there is proper ground for serious complaint of a judicial officer, it is *the right and duty* of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

STATEMENT OF THE CASE

An Order to Show Cause why Petitioner-respondent should not be disbarred from the practice of law before the United States Court of Appeals for the District of Columbia Circuit, a United States Court having original jurisdiction of membership in its bar, issued June 15, 1967 (1a), stating disbarment in the United States District Court for the District of Columbia. Motion to Set Aside Suspension was filed June 20, 1967 (2a) alleging violation of Constitutional rights, and denied by Order entered July 13, 1967 (5a). Answer to the Order to Show Cause was filed July 24, 1967 (5a) alleging violation of Constitutional rights. Disbarment was entered October 4, 1967 (13a), without opinion. Motion to Set Aside Order of Disbarment, filed October 6, 1967 (13a), was denied by Order entered October 25, 1967 (15a).

The sole ground stated in the Order to Show Cause was certification of disbarment in the United States District Court for the District of Columbia, entered April 7, 1966. This disbarment was duly appealed, and petition to this Court for review of affirmation was denied, *Powell* v. *Committee on Admissions and Grievances*, 87 S. Ct. 1487, 386 U.S. 1035. Reconsideration was denied. Violation of Constitutional rights and documented evidence that the Judgment was predicated on perjured testimony and fraud was presented in defense, and was neither answered nor overcome by countervailing evidence. Motion for reinstatement in the District Court, filed June 20, 1967, was denied by Order entered June 23, 1967. Appeal noted July 7, 1967,

and duly docketed, was argued December 15, 1967, and is now pending in the United States Court of Appeals for the District of Columbia Circuit. (Appeal No. 21,220).

Petitioner-respondent Diana Kearny Powell has maintained at all times that her basic constitutional and common-law rights under Amendments 1, 5 and other clauses of the Constitution of the United States, have been violated by disbarment, and that she has acted in the highest traditions of professional ethics in making the formal complaint to the Attorney General of criminal fraud, perpetrated by certain members of the bar and certain judges, which formal Complaint made by her to the Attorney General was the sole ground for her disbarment by the District Court.

SUMMARY OF ARGUMENT

This Court has jurisdiction to review the case in its capacity of supervision of federal courts, and of violation of Constitutional rights of due process, equal protection of the laws, and freedoms under Amendment 1 of free speech and petition. It has the obligation to correct a shocking miscarriage of justice, and to prevent the use of the courts as vehicles of personal vindictiveness and to perpetrate fraud. The disbarment violates rights of due process and equal protection of the law, upheld in numerous cases, including use of disbarment to interfere with due process. The disbarment is in conflict with rulings of this Court, and of Courts of Appeal generally. The disbarment was entered without the opportunity for a trial on the merits, and deprives Petitioner of rights of petition and free speech, specifically to petition the Attorney General for redress of a crime, by use of disbarment to suppress and discredit evidence of fraud on the Court committed by those falsely accusing Petitioner of misconduct.

ARGUMENT

1. This Court has jurisdiction to review this case.

This Court has jurisdiction to review this disbarment as an abuse of discretion and deprivation of basic rights. *Randall* v. *Brigham,* 74 U.S. 523, 7 Wall 523, 19 L. Ed. (U.S. Mass. 1860). It has jurisdiction where the action of the lower courts, as in the instant case, is flagrantly improper and irregular. *Ex parte Burr,* 22 U.S. 529, 9 Wheat. 529, 6 L. Ed. 152 (U. S. Dist. Col. 1824). Although violation of rights of "due process", "equal protection of the law", and right of petition protected by the Constitution are involved in this decision, (see below), this Court may have jurisdiction to review this disbarment involving deprivation of basic rights, even though not embodied in the concept of "due process." *Fay* v. *People of State of New York,* 67 S. Ct. 1613, 332 U.S. 261, 91 L. Ed. 2043, rehearing denied, 68 S. Ct. 27, 332 U.S. 784, 92 L. Ed. 367.

2. This Court has obligation to review this case to prevent shocking miscarriage of justice.

This Court has the unqualified obligation to review this case to prevent a shocking miscarriage of justice. Personal rights are entitled to protection of the courts, and to hold otherwise would be to deny rights of due process. *Fulton* v. *Bekucke,* 106 F. Supp. 157, reversed 199 F. 2d 471 (D.C. Ill. 1952). Petitioner-Respondent is entitled to hold the office of attorney during good behavior. She has been deprived of that right without trial for which she made demand (5a), and without an iota of evidence or cause shown (15a), by a Court which plainly had prejudged, without consideration of the matters of defense and showing of unqualified conformity with the highest standards of good behavior on the part of Petitioner-Respondent. (5-12a).

In *Galpin* v. *Page,* 18 Wall 350, 368, 369, 21 L. Ed. 959, Mr. Justice Field of this Court characterized such procedure as "judicial usurpation." In the words of John Marshall

in his *Debates* in the Virginia Convention, 1829-1831, pages 616, 619;

> Advert, Sir, to the duties of a Judge. He has to pass between the Government and the man which that Government is presenting, between the most powerful individual in the community, and the poorest and most unpopular. It is of the last importance, that in the exercise of those duties, he should observe the utmost fairness. Need I press the necessity of this? Does not every man feel that his own personal security and the security of his property depends on that fairness? The Judicial Department comes home in its effects to every man's fireside; it passes on his property, his reputation, his life, his all. Is it not to the last degree important that he should be rendered perfectly and completely independent, with nothing to influence or control him but God and his conscience? . . . I have always thought, from my earliest youth till now, that the greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people was an ignorant, a corrupt, or a dependent Judiciary.

3. This disbarment violates rights of "due process" and "fair trial" protected by the Constitution.

This Court is by definition the guardian of rights of "due process" (p. 3) and fair trial (p. 3) protected by the Constitution, Amendments 5, 9, 14. In that capacity, defined in Article III of the Constitution, it has taken jurisdiction and has declared that it has an obligation to review a case to correct a shocking denial of basic rights of due process. A human being has an inherent right to due process of law. *Burns* v. *Lovett,* 262 F. 2d 335, 91 U. S. App. D. C. 208, affirmed *Burns* v. *Wilson,* 73 S. Ct. 1045, 346 U.S. 137, 97 L. Ed. 1508, rehearing denied 74 S. Ct. 3, 346 U.S. 844, 98 L. Ed. 363 (C.A.D.C. 1953).

This Court has held that a State may not, by invoking the power to regulate professional conduct of attorneys, infringe on rights protected by the Constitution. *Brotherhood of R.R. Trainmen* v. *Virginia, ex rel. Virginia State*

Bar, (Va. 1964) 84 S. Ct. 1113, 377 U.S. 1, 12 L. Ed. 2d 89, rehearing denied 84 S. Ct. 1625, 377 U.S. 960, 12 L. Ed. 2d 505. The disbarment sought to be reviewed and reversed was for the sole purpose of infringing Petitioner-Respondent's right to petition the Government for criminal action against certain parties guilty of embezzlement and fraud on the Court, to discredit the well-documented complaint and to suppress the evidence supporting it, although unrefuted and before the Court. *Powell* v. *Katzenbach,* 123 U.S. App. D.C. 250, 356 F. 2d 234, certiorari denied 384 U.S. 906, rehearing denied 384 U.S. 967 (1966). (See Amendment 1)

The 5th and 14th Amendments are designed to protect the individual from invasion of his rights, privileges and immunities by the federal and state governments respectively, including the District of Columbia. *Schatte* v. *International Alliance of Theatrical Stage Employees, et al.,* 70 F. Supp. 1008, affd. 165 F. 2d 216, cer. den. 68 S. Ct. 1018, 334 U.S. 812, 82 L. Ed. 1743 (D. C. Cal. 1947); *Hirsh* v. *Block,* 267 F. 614, 50 App. D. C. 56, 11 A.L.R. 1238, cer. den. *Block* v. *Hirsh,* 41 S. Ct. 13, 254 U.S. 640, 65 L. Ed. 452, revd. 1921, 41 S. Ct. 458, 256 U.S. 135, 65 L. Ed. 665, 16 A.L.R. 165.

The judicial department of Government is necessarily governed in the exercise of its functions by the rule of due process of law, *Hovey* v. *Elliott,* (N.Y. 1897), 17 S. Ct. 841, 167 U.S. 409, 42 L. Ed. 215, and judicial judgments are not to be based upon the idiosyncrasies of merely personal judgment. *Leland* v. *State of Oregon,* 72 S. Ct. 1002, 343 U.S. 790, 96 L. Ed. 1302, rehrg. den. 73 S. Ct. 4, 344 U.S. 848, 97 L. Ed. 659 (U.S. Or. 1952).

"Due process" is secured by laws operating on all alike and not subjecting individuals to arbitrary exercise of powers of government, unrestrained by established principles of private right and distributive justice. *Sexton* v.

Barry, 233 F. 2d 220, cer. den. 77 S. Ct. 94, 332 U.S. 870, 1 L. Ed. 2d 76 (CA Ohio 1956); *Hagar* v. *Reclamation Dist. No. 108*, 4 S. Ct. 663, 111 U.S. 701, 28 L. Ed. 569, affd. C. C. *Reclamation Dist. No. 108* v. *Hagar*, 4 F. 566.

Equal protection of the laws is an even more explicit right. *Bolling* v. *Sharpe*, 74 S. Ct. 693, 347 U.S. 497, 98 L. Ed. 884, supplementing *Brown* v. *Board of Ed. of Topeka, Kans.*, 75 S. Ct. 753, 349 U.S. 794, 99 L. Ed. 1083. The necessity of an opportunity to be heard is among the immutable principles of justice which inhere in the very idea of free government. Denial of this basic right in the instant case, in the words of the Court in *Holden* v. *Hardy*, 169 U.S. 366, 389, 42 L. Ed. 780, 790, 18 S. Ct. 383, citing *Galpin* v. *Page, supra*, marks the disbarment as wanting in

> . . . all the attributes of a judicial determination; it is judicial usurpation and oppression, and never can be upheld where justice is justly administered.

4. This disbarment is in conflict with rulings of United States Courts of Appeal generally.

The right to due process of law applies to the right to continue in the practice of law. If one holds the prescribed qualifications, he must be admitted to practice law before the Court as a matter of right, and the attorney having once acquired that license, can only be deprived of it through judicial exercise of due process. *Dillon* v. *United States* (D. C. Or. 1964) 280 F. Supp. 487, reversed on other grounds 346 F. 2d 633; *In re Bennethum*, (D. C. Del. 1961) 196 F. Supp. 541. The opportunity to produce evidence and interrogate witnesses must be afforded. *U.S.* v. *Hicks*, 37 F. 2d 289 (C.C.A. Cal. 1930).

The United States Court of Appeals for the District of Columbia Circuit, almost simultaneously, upheld disbarment, *In the matter of Ewers*, No. 106, May 4, 1967, citing *In re Quimby*, 123 U.S. App. D.C. 273, 359 F. 2d 257 (1966), notwithstanding reinstatement in the District Court,

for embezzling trust funds, misconduct comparable to that about which Petitioner-respondent in the instant case had made the Complaint to the Attorney General, for which she was disbarred. The incongruity of reinstating the attorney who had committed a crime, at the same time disbarring an attorney who had submitted a formal Complaint to a proper Government agency reporting a similar crime, so shocks the conscience as to seem almost incredible, were the irrefutable facts not in plain view. *Powell* v. *Katzenbach, supra.*

Further, no misconduct was alleged, or could be, in the United States Court of Appeals for the District of Columbia Circuit, to support the disbarment in that Court, a matter which concerned only that Court. *In re Ulmer,* 208 F. 461 (D.C. Ohio 1913); *In re Noell,* 21 F. Supp. 379 (D.C. Mo. 1938). This is distinguished from cases in which the disbarred attorney committed criminal acts or frauds on the Court, *Curtis* v. *Whiteford,* 59 App. D.C. 320; *In the matter of Ewers,* Disbarment No. 106, May 6, 1967 U.S. App. D.C.; or committed a contempt of court, or attempted to obstruct justice. *In re Ades,* 6 F. Supp. 467; *Re Watt* (D.C. Pa.) 149 F. 1009. In fact, the persons making the charges against Petitioner-Respondent were the ones whom the record showed to be guilty of the crimes of obstructing justice and fraud on the Court. See also *United States* v. *Manton,* 107 F. 2d 834, 309 U.S. 664; *Thomas* v. *Ogilby,* 59 App. D.C. 382, 44 F. 2d 890.

Petitioner-respondent is entitled to the protection of this Court from the unwarranted deprivation of her right to practice law during good behavior, and to hold otherwise is to deny her right to due process. *Fulton* v. *Bekucke,* 106 F. Supp. 157, reversed 199 F. 2d 471, (D.C. Ill. 1952). There cannot exist under the American flag any government authority untrammeled by requirements of due process as guaranteed by the Federal Constitution. *Mora* v. *Mejias,* 206 F. 2d 377 (C.A. Puerto Rico, 1953).

5. Disbarment for submitting a Complaint of a crime to the Department of Justice deprives Petitioner-Respondent of the right to free speech and petition in violation of Amendment 1 of the Constitution.

Freedom of speech is freedom to tell the truth and comment fairly on facts. *Sweeney* v. *Schenectady Union Publishing Co.* (C.C.A. N.Y. 1941) 122 F. 2d 288, affd. 62 S. Ct. 1031, 316 U.S. 642, 86 L. Ed. 1727, rehearing denied 62 S. Ct. 1266, 316 U.S. 710, 86 L. Ed. 1776. The record fully supports Petitioner-respondent in her Complaint to the Attorney General charging certain individuals with fraud. (6a-9a) The right and duty to inform proper officials of crime is fundamental to orderly Government. In *Near* v. *Minnesota,* 283 U.S. 697, 73 L. Ed. 1357, 51 S. Ct. R. 625 (1931), this Court stated:

> . . . the opportunities for malfeasance and corruption have multiplied, crime has grown to most serious proportions, and the danger of its protection by unfaithful officials and of the impairment of the fundamental security of life and property by criminal alliances and official neglect, emphasize the need of a vigilant and courageous press . . .

How much more fundamental is the basic right of the individual who is the victim of a crime of conspiracy and corruption to report it to Government and to demand the protection and cooperation of that Government, and most particularly of the Department of Justice and of the Courts. The use of disbarment to suppress such a fundamental right is equal to, if not more dangerous, than suppression of freedom of the press. *Brotherhood of R.R. Trainmen* v. *Virginia, ex rel. Virginia State Bar, supra.*

Petitioner-Respondent acted in the highest traditions of professional ethics and loyalty to duty in exposing corruption in the profession and in the Court itself. (*Canons of*

Professional Ethics.) This Court held, in *Ex parte Bradley,* 7 Wall (U.S.) 364, 19 L. Ed. 214:

> In no case has it been considered that the power to disbar is an arbitrary or despotic one to be exercised at the pleasure of the court, or from passion, prejudice, or personal hostility. A sound judicial discretion controls the exercise of the power so that the right and independence of the bar will be scrupulously guarded and maintained by the court, to the same extent as it maintains the rights and dignity of the court itself.

That right to be protected against duress in the practice of law includes also the rights of petition protected by Amendment 1 that is a fundamental incident of the practice of law and its *raison d'être.* The right and duty of citizenship to report a conspiracy to defraud the United States through obstructing justice through deceit, craft, and trickery, are as basic as the laws declaring such conduct criminal. *Hammerschmidt* v. *United States,* 265 U.S. 182, 188.

Cases cited in earlier proceedings leading to this disbarment in fact sustain Petitioner-respondent. *Booth et al.* v. *Fletcher,* 69 App. D.C. 351, 101 F. 2d 676, cert. denied 59 S. Ct. 835, 307 U.S. 628, 83 L. Ed. 1511, for example, predicates the disbarment upon the falsity of the statements and stresses that the respect due to courts must rest, first of all, upon actual integrity. It is pointed out that the record shows Petitioner-Respondent herein based her Complaint of crime solidly upon the admitted record, while the charges against her were perjured and in conflict with the facts. *In re Ades, supra,* citing earlier cases, stresses that disbarment must rest upon a showing of moral turpitude evinced by the alleged misconduct. *Ex parte Wall,* 107 U.S. 265, 27 L. Ed. 552, 2 S. Ct. 569, citing numerous cases, recites:

> "... Disbarment is the extreme measure of discipline and should be resorted to only in cases where the lawyer demonstrates an attitude or course of conduct wholly inconsistent with approved professional standards. To disbar it should be clear that he is one who

> should never be at the bar. . . . it should be ordered only when the misconduct of the attorney may properly be characterized as gross. . . . Further, it is said that an attorney should be disbarred or suspended only where his continuance in practice will be subversive of the proper administration of justice, or incompatible with a proper respect of the court for itself or a proper regard for the integity of the profession.

Bradley v. *Fisher,* 13 Wall (U.S.) 335, 20 L. Ed. 646, in which the disbarred attorney committed a physical attack on the judge to intimidate him, rests upon the attempt to coerce the judge.

The case relied on most heavily, *Duke* v. *Committee on Grievances of the Supreme Court of D. C.,* (1936) 65 App. D.C. 284, 82 F. 2d 890, cert. denied, 56 S. Ct. 751, 298 U.S. 662, 80 L. Ed. 1387, in fact fully supports Petitioner-respondent by showing the misconduct is not in her, but in those who committed perjury and made misrepresentations to the Court to falsely accuse her, limiting the question as to whether the respondent be a fit person to remain a member of the bar of the court, stating:

> . . . He [the attorney] has no right to attempt to cast foul and unfounded aspersions upon the character and conduct of his brother members of the bar, any more than he has to asperse and defame, *without justification,* the character and motives of the judge upon the bench. *Especially is he without warrant in an attempt to make the records of the courts, from the lowest to the highest, vehicles of malicious scandal and libel of any* member of the bar. Upon any other principle for the government of the bar, it would be impossible to conduct business with decorum and with due regard to the orderly proprieties of a court of justice.

The Court might well have been ruling on the instant case when it continued in *Duke:*

> . . . To tolerate such a precedent as this case would make would subject any attorney, in the performance

of his duty, and upon any unfounded pretense supposed to be available to his adversary, to the most unjust and outrageous imputations upon his character and conduct. The bar are entitled to be protected against such abuse of privileges by any of its brother members.

CONCLUSION

WHEREFORE, Petitioner respectfully prays that Writ of Certiorari issue to the United States Court of Appeals for the District of Columbia Circuit for review of the Judgment of Disbarment.

That this Court exercise its power of supervision of United States Courts to investigate the use of intimidation by Disbarment to suppress the basic right and duty to report corruption and crime in prominent members of the bar and by members of the Court.

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